



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
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June 2, 2014

Bay Head Marina LLC
Attention: Bret Thurman
PO Box 15
Deer Harbor WA 98243-0015

RE: Water Quality Certification - Order #10564/Corps Public Notice # NWS-2012-0637 –
Five year maintenance dredging of up to 24,200 cubic yards of sediment from an existing
marina located in Harney Channel, San Juan County, Washington.

Dear Mr. Thurman:

The above-referenced public notice for proposed work in waters of the state has been reviewed in accordance with all pertinent rules and regulations. On behalf of the State of Washington, we certify that the work proposed in the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This certification is subject to the conditions contained in the enclosed Order and may be appealed by following the procedures described in the Order.

If you have any questions concerning the content of this letter, please contact Helen Pressley at (360) 407-6076.

Sincerely,

Brenden McFarland, Section Manager
Shorelands & Environmental Assistance Program
Headquarters Office - Ecology
State of Washington

Enclosure

by Certified Mail: 7010 2780 0000 2503 4003



cc: Susan Powell, Corps
Laura Arber, WDFW
Stan Walsh
Francine Shaw

ecc: Loree' Randall, Ecology
Helen Pressley, Ecology
Laura Inouye, Ecology
Bob Fritzen, NWRO, Ecology
Raman Iyer, NWRO
ecyrefedpermits@ecy.wa.gov
DMMP@dnr.wa.gov

IN THE MATTER OF GRANTING A)	ORDER #10564
WATER QUALITY)	Corps Reference No. NWS-2012-0637
CERTIFICATION TO)	Maintenance dredging sediment from an
Bay Head Marina LLC)	existing marina located in Harney Channel, San
in accordance with 33 U.S.C. 1341)	Juan County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)	
90.48.260 and Chapter 173-201A WAC)	

TO: Bay Head Marina LLC
 Attention: Bret Thurman
 PO Box 15
 Deer Harbor WA 98243

On October 8, 2013 the Bay Head Marina LLC submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on August 15, 2013.

The Applicant proposes maintenance dredging of material from a 3.7 acre existing marina basin to a depth of -8 Mean Lower Low Water (MLLW). Up to 5,000 cy of material will be removed per year over a three to four year period until the basin is returned to its original design depth. The preferred dredging method is by mechanical means using a barge-mounted clamshell bucket dredge or a barge-mounted excavator. The alternative method would be by hydraulic dredge. It is also possible that a combination of mechanical and hydraulic dredge equipment could be used. Up to 20,000 cy of material will be disposed of at the Rosario Strait dispersive open-water disposal site. The remaining approximately 4,200 cy will be stored in uplands at the site to be used for future onsite work.

The purpose of this work is to restore the marina to its original elevation to provide adequate depth for boat access and moorage and so that the marina floats do not ground out at low tide.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 302, 303, 306 and 307);

2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will meet the applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260, Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

1. In this Order, the term "Applicant" shall mean Bay Head Marina LLC and its agents, assignees and contractors.
2. All submittals required by this Order shall be sent to Ecology's Headquarters Office, Attn: Federal Permit Coordinator, P.O. Box 47600 Olympia, WA 98504-7600 and/or hpre461@ecy.wa.gov. Any submittals shall reference Order #10564 and Corps Reference # NWS-2012-0637.
3. All notifications listed below shall be made via phone to Helen Pressley, 360-407-6076, or e-mail at hpre461@ecy.wa.gov. These notifications shall be identified with Order #10564 and include the Applicant's name, the project contact, and the contact's phone number.
 - a. At least ten (10) days prior to conducting initial dredging activities for each dredging season.
 - b. Within at least seven (7) days after completion of the work within a dredging season.
4. Work authorized by this Order is limited to the work described in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on October 8, 2013, unless otherwise authorized by Ecology.

5. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.
6. Within 30 days of receipt of the updated information, Ecology will determine if the revised project requires a new public notice and Certification or if a modification to this Order is required.
7. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual 404 and/or Section 10 permit for the project.
8. The Applicant shall send (per A.2.) a copy of the final Section 404 Corps permit to Ecology's Federal Project Manager within two weeks of receiving it from the Corps.
9. The Applicant shall keep copies of this Order on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
10. Upon Ecology personnel's request, the Applicant shall provide access to the project site, all staging areas, and mitigation sites for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
11. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Furthermore, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified or if additional conditions are necessary to further protect water quality.
12. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48), or the federal Clean Water Act, Ecology will issue an administrative order to incorporate any such changes or amendments applicable to this project.
13. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project.
14. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state (including wetlands) or related aquatic resources, except as specifically provided for in conditions of this Order.

15. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

16. This Order will automatically transfer to a new owner or operator if:

- a. A written agreement between the Applicant and new owner or operator with the specific transfer date of the Order's obligations, coverage, and liability is submitted to Ecology per condition A.2.;
- b. A copy of this Order is provided to the new owner or operator; and
- c. If Ecology does not notify the new Applicant that this Order must be modified to complete the transfer.

B. Water Quality Conditions:

1. This order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i).

- The area of mixing established for marine waters is a 150 foot radius surrounding the in-water activity. Turbidity occurring outside that zone that is more than 5 nephelometric turbidity units (NTU) over background when the background is 50 NTU or less, or a 10% increase in turbidity when the background turbidity is more than 50 NTU is a violation of the turbidity water quality standard.
- Visible turbidity anywhere at 150 ft point of compliance from the activity and/or the disposal location shall be considered to be an exceedance of the standard.

C. Water Quality Monitoring:

1. The Applicant shall submit a water quality monitoring plan to Ecology per Condition A2 at least 14 days prior to dredging. This plan shall be approved by Ecology prior to any in-water work. The plan shall include at a minimum the following information:

- a. Name and contact information of the person or firm responsible for monitoring;
 - b. Map of sample locations including background, 150 feet upcurrent, 100 feet early warning and at the point of compliance 150 feet downcurrent from dredging activities and/or discharge. For this project the point of compliance is a radius of 150 feet from the activity causing the turbidity exceedance.
 - c. Parameter(s) to be monitored: turbidity.
 - d. Sample method;
 - e. Frequency, and
 - f. Steps to be taken if monitoring results indicate an exceedance has occurred. The amount of the exceedance and the reason for the exceedance shall also be reported.
2. Turbidity monitoring reports shall be sent weekly to the 401/CZM Federal permit coordinator. The permit coordinator shall be contacted within 24 hours if an exceedance occurs.

D. Dredging and Disposal:

1. All dredging is to be done using a barge mounted clamshell bucket dredge or excavator. Another possibility would be the use of hydraulic dredge or some combination of all three. **Use of any other type of dredge requires pre-approval from Ecology.**
2. All dredged material will be disposed of at the Rosario Straits open water dispersive site except for 4,200 cy which will be pumped upland, and stored for use upland above the Ordinary High Water Mark. The Applicant shall use appropriate best management practices such as tarps or geotextile to cover and protect sediment stored upland to prevent the entry of turbid water into waters of the state. **Use of any other type of disposal method or location requires pre-approval by Ecology.**
3. For material being taken to the Rosario open water disposal site, all debris (larger than 2 feet in any dimension) shall be removed from the dredged sediment prior to disposal. Similar sized debris found floating in the dredging or disposal area shall also be removed.
4. Dredging operations shall be conducted in a manner that minimizes the disturbance or siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals or other toxic or deleterious substances into waters of the State.
5. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
6. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
7. The barge shall not be overfilled to the point where dredge material overtops the sidewalls. The scuppers on a flat top barge should be covered with geotextile material to prevent the release of turbid water from the barge.
8. Caution shall be used when placing material from the bucket into the barge to limit splash and prevent spillage.
9. The Dredge operator shall pause the bucket at the surface, after its ascent through the water column, to minimize turbidity by allowing free water to drain from the bucket prior to swinging the bucket to the bottom dump barge or flat top barge with side boards.
10. A pre-dredge meeting is required to be convened prior to the start of dredging. A **Dredging Plan** is required and shall be submitted to Ecology to the 401/CZM Federal permit coordinator at the address shown in Condition A2 for review and approval 2 weeks prior to the pre-construction meeting.
11. At least one year prior to the expiration of the suitability determination in February of 2017, the Applicant shall contact the DMMP agencies. If additional testing is required, no dredging or disposal shall be conducted until the material has been tested and a

suitability determination has been issued. This area ranks moderate in potential for contamination and the recency determination extends until February, 2017. Contact the DMMO for a possible extension on the suitability determination if necessary.

E. Timing Requirements:

1. All in-water work shall be completed by the work window identified in the most current HPA issued for this project. Any project change that requires a new or revised HPA should also be sent to Ecology for review.
2. This Order shall remain in effect for a period of 5 years from date of issuance; however, the expiration date may be extended by Ecology at the request of the Applicant.

F. Emergency/Contingency Measures:

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
 - a. Cease operations that are causing the compliance problem.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - e. Immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events Ecology's 401/CZM Federal permit coordinator at (360) 407-6076.
 - f. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.

4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology using the above phone numbers.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do all of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel RD SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Helen Pressley
Department of Ecology
Ecology Headquarters
300 Desmond Dr.
Lacey WA 98503
360-407-6076
Hpre461@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website

www.eho.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

Chapter 371-08 WAC – Practice And Procedure

<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

Chapter 34.05 RCW – Administrative Procedure Act

<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>

Chapter 90.48 RCW – Water Pollution Control

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

Chapter 173.204 WAC – Sediment Management Standards

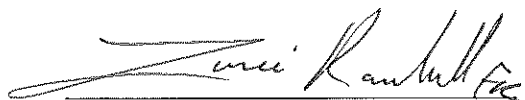
www.ecy.wa.gov/biblio/wac173204.html

Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington

www.ecy.wa.gov/biblio/wac173201A.html

SIGNATURE

Dated this 2nd day of June at the Department of Ecology, Lacey, WA.



Brenden McFarland, Section Supervisor
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program
Headquarters

ATTACHMENT A

Bay Head Marina LLC

**Water Quality Certification Order #10564
Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #10564 Section 401 Water Quality Certification for the *Bay Head Marina Maintenance Dredge Project*. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

Signature

Date

Print Name

Company

Title

